Service Date: October 19, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

In the matter of Spiros D. Cagley dba Big Sky Taxi and Airport Shuttle, Kalispell, Montana, Application for a Montana Intrastate Certificate of Public Convenience and Necessity.	)))))	TRANSPORTATION DIVISION DOCKET NO. T-04.15.PCN ORDER NO. 6553a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Spiros D. Cagley, dba Big Sky Taxi and Airport Shuttle, 403 W. Evergreen Dr., Kalispell, MT 59901.

FOR THE PROTESTANTS:

Christina Valecich, Esq., 100 2nd St. E., Suite 215, Whitefish, MT 59937.

COMMISSION STAFF:

Robin A. McHugh, staff attorney, 1701 Prospect Ave., Helena, MT 59620.

BEFORE:

Bob Rowe, Commissioner and Hearing Examiner.

INTRODUCTION

The Commission issued Proposed Order No. 6553 in this docket on September 17, 2004. No exceptions were received. With the exception of paragraph 20, the Commission here adopts the Proposed Order as its Final Order.

BACKGROUND

1. On March 16, 2004 the Commission received an application from Spiros D. Cagley, dba Big Sky Taxi and Airport Shuttle (Applicant) for a Certificate of Public Convenience and Necessity, Class B, authorizing passengers between all points and places in Flathead County, Montana.

2. Timely written protests to the application were received from Louis W. and Geneva L. Webster, dba The Great Northern Taxi; Flathead Glacier Transportation, LLC; Adam, Inc., dba Wildhorse Limousine and Carriage Co.; and Darrell A. Hegel, dba D.C. Cab. On July 2, 2004 the Commission granted a late protest from Flathead Area Custom Transportation, Inc., dba Kalispell Taxi and Airport Shuttle Service.

3. In response to the timely protests the Applicant amended his application as follows:

> Class B - Passengers between all points and places in Flathead County, Montana. LIMITATIONS: (1) Transportation in limousine service is prohibited. (2) Transportation originating in Whitefish, Montana and an eight (8) mile radius is prohibited, except as part of a return trip. (3) Transportation originating in Columbia Falls, Montana and a nine (9) mile radius, excluding Glacier International Airport, is prohibited, except as part of a return trip.

Following the amendment The Great Northern Taxi, Wildhorse Limousine and Carriage Co., and D.C. Cab no longer had valid protests and were dismissed from the docket.

4. Following issuance of proper notice a hearing was held on July 7, 2004, in the Fish Wildlife and Parks Building, 490 North Meridian Road, Kalispell, Montana. In addition to the Applicant, Protestant Kalispell Taxi appeared at the hearing. Protestant Flathead Glacier Transportation did not appear and is dismissed from the docket. At the close of the hearing no party ordered a transcript or requested the opportunity to file a brief. Also at the close of the hearing Commissioner Rowe granted attorney Christina Valecich's request to withdraw as counsel for Kalispell Taxi, with the consent of her client.

SUMMARY OF TESTIMONY

Testimony for the Applicant

5. Applicant Spiros Cagley appeared and testified in support of his application. Mr. Cagley stated his opinion that taxi service in the area applied for is limited, that Kalispell Taxi is protesting to eliminate competition, that the public would like to have more than one taxi company and that he could provide more professional service. He stated that the vehicle he will use for the taxi is a 1997 Accura, which is reliable. He knows the cost of insurance, has calculated the rates he will charge, will use a cell phone to be his own dispatcher, will take out a listing in the Yellow Pages at the next opportunity, will offer 24 hour a day service with the help of another driver, has a perfect driving record, and will comply with the rules of the Commission and the laws of the State of Montana. Mr. Cagley currently runs a janitorial service, which he will at least temporarily continue as he makes the transition to the taxi business.

6. Renae Olsen, a Kalispell resident, appeared and testified in support of the application. Ms. Olsen does not own a car and uses a taxi once or twice a week. She said she uses Kalispell Taxi and basically does not have a problem with the service, except that she sometimes has to wait for the taxi longer than she would like. She thinks Kalispell is big enough for two taxi companies.

7. April Hart, a Kalispell resident, appeared and testified in support of the application. Ms. Hart admitted she has never needed or used taxi service, but would use Applicant's service if the need arose. She expressed her opinion that Kalispell could use another taxi service, and could also use a smoke free taxi.

8. Patricia Holmquist, a Kalispell resident, appeared and testified in support of the application. Ms. Holmquist works in a medical office and described a situation where a patient needed transportation a short distance from the office to a nursing home. Kalispell Taxi was called but indicated it couldn't provide the transportation for 90 minutes. The patient was pushed to the nursing home in a wheelchair. Because of this incident Ms. Holmquist thinks there is a need for additional taxi service in Kalispell. She stated this was the only such incident she is aware of, and also stated that Kalispell Taxi was not called in advance.

9. Karen Holmquist, a Kalispell resident, appeared and testified in support of the application. Ms. Holmquist described two incidents: a person staying at a local hotel called for a taxi and the taxi went the "long route" to the destination, the driver apparently not familiar with the area; she called for a ride to the airport and the driver got lost. These incidents convince Ms. Holmquist that the area needs a "choice" of taxi companies. Ms. Holmquist could not testify that the taxis involved in the incidents she described were from Kalispell Taxi.

10. Steve Graff, a resident of Martin City, appeared and testified in support of the application. He thinks there is a need for another taxi because Kalispell Taxi is the only taxi listing in the Kalispell phone book. He described incidents where persons needing transportation from an area bar had to wait too long for a ride, and that his wife had to wait 90 minutes for a ride to Martin City from the North Valley Hospital. Mr. Graff couldn't testify that these incidents involved Kalispell Taxi.

Testimony of Protestant

11. Darrell Hegel, a resident of Columbia Falls appeared and testified in support of the Protestant. Mr. Hegel owned a taxi certificate to provide service in the Kalispell area but sold it because there was not enough business. Mr. Hegel does not agree that the area needs another taxi company, and indicated he thinks Kalispell Taxi provides pretty good service.

12. James Michael, the president and owner of Kalispell Taxi, appeared and testified in opposition to the application. Mr. Michael described Kalispell Taxi: it has been in business since 1980; it has 10 vehicles available, ranging from 4 passenger cars to 14 passenger transit buses; two vehicles are capable of transporting nonambulatory customers. Mr. Michael thinks Kalispell Taxi does a good job and has satisfied customers. He does not think there is a need for another taxi service in the area served by Kalispell Taxi. He thinks another taxi would be destructive of taxi service in the area generally. He stated the latest gross annual sales revenue of Kalispell Taxi was $250,000, which is a reduction from previous years. He thinks most of the reduction is "cyclical" but some is a result of competition. He stated it takes $50,000 of annual

revenue per taxi vehicle to "break even." He contends that additional competition reduces revenues and undermines the ability of Kalispell Taxi to provide good service.

13. In response to testimony for the Applicant Mr. Michael testified that the medical community normally makes advance arrangements for transportation, but there are occasionally spontaneous calls. He said he was not aware of the incident testified to by Ms. Holmquist, but regrets it. He indicated Kalispell Taxi will provide a smoke free vehicle if requested in advance. He denied that the normal waiting time for service from Kalispell Taxi is an hour, claiming that Kalispell Taxi is diligent about trying to provide service within 10 or 15 minutes. He noted that normally the farther from Kalispell service is requested, the longer the response time. He said that given the distance 30 minutes is a normal response time to the Blue Moon Tavern. He stated that Kalispell Taxi advertises in the Internet yellow pages and has advertised in the regular yellow pages for 24 years.

DISCUSSION, ANALYSIS AND FINDINGS

14. In considering applications for operating authority, the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2)(a) of that section provides as follows:

> If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous through 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

15. Applying this language to the facts presented by any application for transportation authority, the Commission has traditionally undertaken the following analysis: First, it asks whether the applicant has demonstrated that there is a public need for the proposed service. If the applicant has not demonstrated public need then the

application is denied and there is no further inquiry. Second, if the applicant has demonstrated a public need for the proposed service, then the Commission asks whether existing carriers can and will meet that need. If demonstrated public need can be met as well by existing carriers as by an applicant, then, as a general rule, an application for additional authority will be denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers; the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the applicant fit to provide the proposed service.

16. The traditional analysis described above has perhaps been stated most concisely in the case of Pan American Bus Lines Operation, 1 M.C.C. 190, 203 (1936):

> The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

17. Applying the law to the record in this docket the Commission concludes that the application should be denied. The evidence does establish a need for taxi service in the Kalispell area. It does not, however, establish that existing carriers are not meeting or will not meet that need. Renae Olsen was basically supportive of Kalispell Taxi Service, except that at times she would prefer a shorter wait. April Hart has never needed or used a taxi service, making her testimony essentially irrelevant to any element of public convenience and necessity (PC&N). Karen Holmquist testified to two unfortunate incidents involving taxi service in the Kalispell area but could not testify that Kalispell Taxi was involved. Similarly, Mr. Graff could not testify that the incidents he described involved Kalispell Taxi, and in any event delay in service to the Blue Moon Tavern can be partly explained by the distance of that establishment from Kalispell.

18. The only testimony on the record that unquestionably raises an issue involving Kalispell Taxi Service is from Patricia Holmquist. However, given that this was the only such incident noted, that Kalispell Taxi was not called in advance, and that

given the demands of a busy time it is not clearly unreasonable to have a 90 minute wait in response to a spontaneous call. The Commission finds Ms. Holmquist's testimony not sufficient to establish any element of PC&N.

19. Finally, even if the Commission could find that Applicant's evidence supports some element of PC&N for a new service (beyond the simple element of establishing public need), Kalispell Taxi's claim and explanation of harm should the application be granted went unchallenged. The Commission considers taxi service an essential transportation service, and therefore, unless there is substantial evidence of service failure by existing carriers, potential harm to existing carriers is an important element of PC&N. A claim and demonstration of harm by an existing carrier must generally be affirmatively overcome by an applicant.

Conclusion of Law

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

3. On this record the Applicant has not sufficiently established the elements of public convenience and necessity necessary to support a Commission grant of authority.

Order

Now therefore, it is ordered that the application in this docket is denied.

Done and dated this 14th day of October, 2004, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
BOB ROWE, Chairman and Hearings Examiner

_____
THOMAS J. SCHNEIDER, Vice Chairman

_____
MATT BRAINARD, Commissioner

_____
GREG JERGESON, Commissioner

_____
JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

Special Concurrence of Commissioner Rowe

The Hearings Officer knows that the Flathead Valley has grown tremendously in recent years. Its residents reasonably expect readily available taxi service of good quality. Within the law's constraints, it is the Commission's responsibility to make decisions that are over the long term, consistent with that expectation. Over my years on the Commission I have frequently asked whether the current structure best serves the interests of Montana's communities, and within the law have tried to make decisions consistent with these community interests. While recognizing the commercial and legal interests of current permit holders, I have disliked making decisions that, in some instances, might preclude otherwise qualified individuals from pursuing a particular business, rather than allowing them to succeed or fail on their own. (Many who are granted transportation permits quickly conclude that it is very tough to sustain a viable operation, and either relinquish or in some cases sell their permit.) Nonetheless, as it has modified transportation law over the years, the Legislature has not revised the law for this form of transportation. Transportation regulation is a much smaller portion of the Commission's overall responsibility than when I first took office (matched by a corresponding reduction in employees in this area). However, it remains important to the communities and individuals affected by it. In my opinion, a well-prepared business plan and a well-presented application might, in a future case, qualify for a different result.

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BOB ROWE, Hearing Examiner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Final Order No. 6553a, issued in Docket T-04.15.PCN in the matter of Spiros D. Cagley dba Big Sky Taxi and Airport Shuttle, Kalispell, Montana has today been sent to all parties listed.

MAILING DATE: October 19, 2004

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FOR THE COMMISSION

FIRST CLASS MAIL

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